

THE HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

BRIAN D. BORGELT and CHARLES N.  
CARR, dba BULL'S EYE SHOOTERS  
SUPPLY,

Petitioners,

v.

THE BUREAU OF ALCOHOL, TOBACCO  
AND FIREARMS,

Respondent.

NO. C03-2630RSM

SECOND SUPPLEMENTAL  
DECLARATION OF BRIAN D.  
BORGELT

I, Brian D. Borgelt, state as follows:

The government's claim that I and not Inspector Dimond was responsible for approving the failed system of filing Forms 4473, after his failed and inaccurate audit, is a lie. In a nutshell, the facts are as such: Inspector Dimond admitted soon into his audit that he had never audited a shop with our volume of inventory and sales, and that he had no idea how to go about it accurately. I gave him my support in coming up with ideas and the help and cooperation of my staff. He developed, on the spot, a computer spreadsheet, spent a month in the store working on it with a singular focus, and left with a list of "open

SECOND SUPPLEMENTAL DECLARATION  
OF BRIAN D. BORGELT-1

CABLE, LANGENBACH,  
KINERK & BAUER, LLP  
SUITE 3500  
1000 SECOND AVENUE  
SEATTLE, WASHINGTON 98104-1048  
(206) 292-8800

1 dispositions” which we immediately began closing as we corrected his oversights. These  
2 oversights on his part were never thought to be anything other than normal human error -  
3 not willful, plainly indifferent, or reckless acts.

4 At the time, our records were kept in chronological order by date of transfer, as per  
5 ATF regulations. For obvious reasons, Inspector Dimond found this legal method of filing  
6 hard to audit. It required going back and forth from the A&D Book to the large number of  
7 archived records boxes.

8 Inspector Dimond and I discussed other options in regards to filing the Forms 4473,  
9 which would make future audits easier. One authorized method was called “by serial  
10 number.” Inspector Dimond thought that this could not mean “by weapon serial number”  
11 since they are obviously non-sequential.

12 Inspector Dimond suggested that the regulation could only mean the stock number  
13 which the weapons were assigned when they were received from distributors, individuals,  
14 and manufacturers. Those were the only sequential numbers we had. I felt I had no choice  
15 but to agree with him.

16 This system, in theory, would mean that an auditor would only have to thumb  
17 through archived Forms 4473 and match them to the same number in the A&D Book. This  
18 required the re-filing of all Forms 4473 – tens of thousands of them.

19 That is where theory ended and reality took over, resulting in an expensive disaster  
20 of a system that made internal and external auditing impossible and consumed enormous  
21 resources that could have been well used elsewhere, including to comply with ATF rules.  
22

1 My former company, Bull's Eye Shooter Supply, attained an extremely high rate of  
2 accuracy in regards to firearms tracking and tracing, especially for a "high volume" gun  
3 shop. We used this data on many occasions to assist law enforcement agencies in catching  
4 and prosecuting dangerous criminals. This is true also in spite of the proven yet  
5 unprosecuted felonious theft activities by key Bull's Eye employees.

6 After my license was revoked and when Martha Tebbenkamp (BATF) came for my  
7 records, I was personally matching open dispositions with Forms 4473 which were "lost"  
8 in the filing archive. I explained this to Agent Tebbenkamp, and she showed absolutely no  
9 interest in my rapidly shrinking "open dispositions." The government had no real interest  
10 in the disposition of these firearms, although they claim to take them so seriously, despite  
11 their claims that they are very concerned for public safety through accountability.

12 The government makes mention of 34 firearms which were transferred without a  
13 Form 4473. They state that Inspector Sherlock came up with the idea to search the  
14 Washington State Department of Licensing for record of their transfer, as required by state  
15 law.

16 This is another fabrication by the government: I came up with that idea as I was led  
17 to believe we were working together, as in the past, to achieve accountability. Inspector  
18 Sherlock merely put in the request as they needed her authority to do so; she was otherwise  
19 clueless. The carbon duplicates of these forms were stapled to the Forms 4473 and were  
20 being retrieved when Agent Tebbenkamp scooped them up and threw them into the back of  
21 her pickup truck.  
22

1 At the time of the last audit, I had just completed a full renovation of my store, with  
2 a key focus on security and accountability. In doing this, I spent a lot of time and money,  
3 building a secure back room for back-up gun inventory, with restricted employee access. I  
4 positioned the checkout counters near the entrance/exit and mandated that someone always  
5 be present at that station to see who and what was coming and going.

6 I bought an expensive state-of-the-art computer inventory control system to track  
7 inventory. I created dedicated departments to promote specific responsibilities. I created a  
8 position just to manage the filing of paper into that debacle of a records archive mandated  
9 by Inspector Dimond. I mandated that all employees pass a police background check and  
10 obtain a concealed pistol permit.

11 With 14 employees, on overlapping shifts, 360 days a year, in a growing business, I  
12 had to trust people to perform honestly in my absence, and I had to trust the findings of the  
13 BATF in their annual audits.

14 At no time did I ever act or give direction to act in a way that was negligent or  
15 indifferent, and always and repeatedly encouraged and demanded that my employees insure  
16 that we comply with the law and regulations.

17  
18 I certify under penalty of perjury under the laws of the State of Washington that the  
19 foregoing is true and correct.

20 Respectfully submitted this 19<sup>th</sup> day of June 2009.

21  
22 /s/

Brian D. Borgelt